

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X who has remained in immigration detention more than 42 months (three and a half years).

The first assessment 1003435 was tabled in Parliament on 15 April 2016 and the second assessment 1002162-O was tabled in Parliament on 20 October 2016. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Stateless, born in Country A of B ethnicity
Year of birth	1995
Ombudsman ID	1002162-O1
Date of DIBP's report	13 September 2016 and 14 March 2017
Total days in detention	1276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment (1002162-O), Mr X remained at Facility J.	
7 July 2016	Transferred to Quest Apartments Alternative Place of Detention (APOD) in Victoria. The Department of Immigration and Border Protection (the department) advised that an external disability service provider was engaged to support Mr X while residing at this location.
4 November 2016	Transferred to Macleod APOD in Victoria. The department advised that Macleod APOD is a supported residential dwelling managed by a disability service provider and that regular contact is being facilitated between Mr X and his mother. ¹

Recent visa applications/case progression

13 September 2016	The department advised that International Health and Medical Services (IHMS) had assessed Mr X to be potentially incapable of communicating his protection claims and to lack the capacity to make his own legal decisions. The department was therefore exploring options for appointing a legal guardian for Mr X to support him while he remains in detention and potentially make protection claims on his behalf.
17 January 2017	Mr X's mother, Ms Y, lodged a Safe Haven Enterprise visa application which included Mr X's three siblings as dependants. Ms Y indicated that she would like Mr X to be included as a dependant on the application, subject to her making a guardianship application on his behalf.

¹ Mr X arrived in Australia with his mother and his three siblings. His family was released from immigration detention on bridging visas on 20 May 2015 and currently reside in Melbourne.

8 March 2017	The department referred Mr X's case to the Australian Government Solicitor (AGS) for the possible allocation of a court appointed legal guardian.
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Health and welfare

<p>IHMS advised that Mr X continued to experience recurrent seizures during this reporting period and was transferred to hospital in August 2016 and January 2017 after having multiple seizures across consecutive days. He was reviewed by a neurologist in September 2016 and underwent further testing, with no new abnormalities identified. Mr X is prescribed oral medication to control his epilepsy, but can be non-compliant at times and requires encouragement and reminders of the importance of regularly taking his medication. Mr X also received dental treatment for further injuries caused by his seizures.</p> <p>IHMS further advised that Mr X has complex developmental and intellectual disabilities and required ongoing monitoring under a psychological support program as a result of his unsettled behaviour and outbursts of aggression. IHMS advised that Mr X's impaired judgement creates a chronic ongoing risk of harm to himself and others and that he is closely monitored and cared for by Serco officers to ensure his safety.</p>	
18 March 2016 – 14 December 2016	Incident Reports recorded that Mr X threatened self-harm on three occasions.
18 August 2016 and 16 January 2017	Incident Reports recorded that Mr X self-harmed.

Recent detention incidents

<p>Incident Reports recorded that Mr X has allegedly been involved in multiple behavioural incidents since the Ombudsman's previous report, including displaying inappropriate and aggressive behaviour and assaulting service provider staff. Spontaneous use of force has been required on several occasions to prevent Mr X from harming himself and others.</p>

Case status

<p>Mr X was detained on 15 September 2013 after arriving in Australia by sea and has been held in detention for more than three and a half years.</p> <p>On 8 March 2017 the department referred Mr X's case to the AGS for the possible allocation of a legal guardian to support him while he remains in detention and potentially make protection claims on his behalf.</p> <p>The Ombudsman's previous report 1002162-O recommended that Mr X be transferred to a suitable APOD in Melbourne as soon as possible to enable him to receive developmental disability care and family support.</p> <p>On 20 October 2016 the Minister noted the recommendation and advised that Mr X had been transferred to a facility in Melbourne.</p>
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